
Board Action Bulletin



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NCUA BOARD MEETING RESULTS FOR DECEMBER 16, 2010

Final rules adopted to protect members

The NCUA Board approved, by a 2-to-1 vote, final amendments to Parts 701, 708a and 708b to better protect credit union member rights and ownership interests. Effective 30 days after publication in the *Federal Register*, the rule amendments: (1) create new §701.4 to address fiduciary duties of FCU directors; (2) create new subpart C of Part 708a to address credit union to bank mergers; and (3) revise existing rules on charter and insurance conversions in Parts 708a and 708b.

New fiduciary duty rule §701.4 requires all FCU directors to carry out their duties in good faith, in a manner reasonably believed to be in the best interests of the membership of the credit union, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances, and within six months to learn to read and understand the credit union's balance sheet and income statement. Also, §701.33 is amended to prohibit FCUs from indemnifying officials or employees for liability associated with misconduct that is grossly negligent, reckless, or willful in connection with a decision that adversely affects the fundamental rights of members. The credit union may, however, purchase liability insurance and/or advance funds to a director if the director needs the funds to prepare a legal defense and the credit union believes the director will not be found liable.

New subpart C of Part 708a establishes procedural and substantive requirements for converting a credit union to a bank through merger. New requirements for merger valuation, regional director approval, member disclosure, and member participation are intended to ensure that members' interests are protected during the process of converting to a non-credit union charter. The new requirements apply to direct mergers as well as transactions where the credit union first converts to a mutual savings bank (MSB) and then merges with another bank without operating as a stand-alone MSB.

Finally, the proposed amendments to Parts 708a and 708b revise existing rules to enhance the secrecy and integrity of the voting process in MSB and insurance conversions and require additional disclosures to members about the cost and effect of charter conversions.

More flexible low-income qualification proposed

The NCUA Board issued proposed qualification criteria that would enable federal credit unions to add the option of using sample data from loan files or a member survey to meet low-income designation requirements.

Issued with a 60-day comment period, the section 701.34 amendment would permit a federal credit union to rely on a sample of membership income data drawn from loan files or a member survey. The FCU must demonstrate the sample is a statistically valid, random sample by submitting, along with data, a narrative describing the sampling technique and evidence supporting validity of the analysis, including actual data used in the analysis.

A low-income designation authorizes FCUs to accept non-member deposits, raise supplemental capital, apply for NCUA grants, and earn an exception to the member business lending cap.

Low-income definition amended

The NCUA Board amended the definition of “low-income members” in §701.34 to clarify that, when comparing credit union data on member income with Census Bureau data to determine if a credit union qualifies as low-income, the comparison must be between like data categories. The rule was previously issued as an interim final rule, which became effective on publication August 5, 2010, and is being published now as a final rule without change.

Federal insurance statement proposed for advertising

The NCUA Board issued, by a 2-to-1 vote, a proposal to revise provisions within the advertising rule to require the official NCUA advertising statement appear in all radio and television advertisements, annual reports, and statements of condition required to be published by law. The verbal statement can be as brief as “Federally insured by NCUA.” The Part 740 proposal, issued with a 60-day comment period, also defines the term “advertisement” and clarifies size requirements for the official advertising statement in print materials.

Insurance unlimited on noninterest-bearing transaction accounts

The NCUA Board issued a proposed rule amending Part 745 to clarify the insurance protection provided by the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

The Dodd-Frank Act provides that through December 31, 2012, the NCUA Board, in addition to insuring member accounts up to at least \$250,000, shall fully insure the net amount that any member or depositor at an insured credit union maintains in a noninterest-bearing transaction account.

While this insurance protection is self-implementing and already in place, this proposed rule would: (1) clarify the definition of the term “noninterest-bearing transaction account;” (2) provide that this new insurance coverage is separate from, and in addition to, other coverage provided in NCUA’s share insurance rules; and (3) impose certain notice and disclosure requirements. The proposal was issued with a 60-day comment period.

NCUSIF equity holds steady

The National Credit Union Share Insurance Fund (NCUSIF) equity ratio of 1.29 percent at November 30 remained unchanged from the prior month.

The NCUSIF reported year-to-date net income of \$329 million as of November 30. No insurance loss expense was recorded in November, and the provision for credit losses (reserves) for natural person credit unions remained \$1.21 billion.

As of November month end, 372 federally insured credit unions, with assets of \$43.4 billion and shares of \$38.3 billion, were designated as CAMEL code 4 or 5. In addition, there were 1,792 CAMEL 3 credit unions with assets of \$158.2 billion and shares of \$139.7 billion. Overall, 22.3 percent of all credit union assets are in CAMEL code 3, 4 or 5 credit unions.

Through November, 27 federally insured credit unions have failed in 2010 -- 17 liquidations and 10 assisted mergers.

The Temporary Corporate Credit Union Stabilization Fund (TCCUSF) total liabilities and net position remained unchanged at \$4.37 billion.

Financial data reported for both the Share Insurance Fund and the Temporary Corporate Credit Union Stabilization Fund are preliminary and unaudited.

Chief Economist added to NCUSIF Investment Committee

The NCUA Board approved revisions to the National Credit Union Share Insurance Fund investment policy that add the chief economist to the NCUSIF Investment Committee and identify the chief economist's role on the committee.

FOM appeal denied

The NCUA Board denied the field of membership expansion appeal of Tri-State Federal Credit Union to add members of the YMCA of East Liverpool, Ohio. NCUA approved adding the employees of the local YMCA, but found that the proposed membership group does not meet the common bond requirements for an associational group contained in the *NCUA Chartering and Field of Membership Manual*.

CLF modifies expense reimbursement allocation

The NCUA Board approved a change to the calculation the Central Liquidity Facility uses to reimburse the NCUA Operating Fund for certain indirect expenses. The change will be retroactive to January 1, 2010.

The FCU Act empowers the NCUA Board to determine the amount of expenses that will be assessed to the CLF. CLF reimburses the Operating Fund quarterly for direct expenses such as salaries and benefits of CLF staff and CLF's portion of space rental. CLF reimburses annually for indirect expenses such as Board and Central Office staff, supplies, postage, printing and telephone. Congress has set a maximum CLF budget of \$1.25 million.

Board votes are unanimous unless otherwise indicated. All Board Action Memorandums are available online at www.ncua.gov under Agency Leadership/NCUA Board and Actions/Draft Board Actions, and NCUA rule changes are posted online at www.ncua.gov under Resources/Regulations, Legal Opinions and Laws.